

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 127 OF 2024 & IA NO. 62 OF 2024

Dated: 6th August, 2024

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

Cellular Operators Association of India ... Appellant(s)
Through its Deputy Director,
14, Bhai Veer Singh Marg,
New Delhi 110 001

VERSUS

- 1. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION**
Through its Secretary,
Irrigation Colony, Shanti Nagar,
Raipur, Chhattisgarh, PIN 492001. ... Respondent No.1

- 2. CHHATTISGARH STATE POWER DISTRIBUTION COMPANY LIMITED**
Through its Managing Director
4th Floor, Sewa Bhawan,
Dangania, Raipur,
Chhattisgarh – 492013. ... Respondent No.2

Counsel on record for the Appellant(s) : Amit Kapur
Akshat Jain
Aditya H. Dubey
Abhimanyu Maheshwari
Avdesh Mandloi
Shikhar Verma

Counsel on record for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Kriti Soni

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

IA NO. 62 OF 2024
(For leave to file appeal)

Appeal No. 127 of 2024 is filed by the Cellular Operators Association of India challenging the order passed by the Chhattisgarh State Electricity Regulatory Commission (for short “**CSERC**”) in Petition No. 95 of 2022 (T) dated 28.03.2023 determining the final true-up for FY 2021-22, and re-determination of ARR and Retail Tariff for FY 2023-24, projection of revenue at existing tariff and charges with revenue gap and determination of retail supply tariff for the FY 2023-24. By the order impugned in this Appeal, the CSERC, while determining the retail supply tariff of Chhattisgarh State Power Distribution Company Limited (for short “**CSPDCL**”) for FY 2023-24, however, classified telecom service providers (three of whom are core members of the Appellant Association) under the commercial tariff category of LV-2.2 (Non-Domestic) instead of industrial tariff category of LV5 (Industrial) which the Telecom Service Providers claim to fall under. As against the tariff applicable to LV-2.2 category, the tariff prescribed for LV5 category is higher by Rs.3.10 per unit. The Appellant, which had raised objections on behalf of its members (ie Telecom Service Providers) before the CERC, has, by way of the present I.A, sought leave to file an appeal against the impugned order passed by the CERC.

As several objections are raised by Mr. Ravi Sharma, learned Counsel for CSPDCL, to the maintainability of the IA for grant of leave to file appeal, it is convenient to examine them under different heads:

I. DOES THE APPELLANT LACK LOCUS-STANDI TO FILE THE PRESENT APPEAL:

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the Appellant Association lacks locus standi to file the present appeal as they have not shown how they are aggrieved by the passing of the impugned order; the challenge to the tariff order by a person who is neither aggrieved nor a stakeholder would open flood-gates for unwanted and unwarranted litigation adversely affecting the tariff determination exercise (**U.P. power Corporation limited vs. NTPC Limited (2009 6 SCC 235**; and **Tata Power Delhi Distribution Limited vs. Delhi Electricity Regulatory Commission** (Judgement of Aptel in Appeal No. 246 of 2014 dated 13.09.2019); neither is the Appellant Association a consumer nor does it function in the State of Chhattisgarh (**GRIDCO Ltd. vs. Jindal Stainless Limited & Ors.** (2009 SCC OnLine APTEL 58), nor has the Appellant suffered any legal grievance; the impugned order is neither prejudicial nor has it adversely affected their interest as an Association; and, therefore, they lack locus standi.

On the objections raised regarding the Appellant's locus standi to file the present appeal, Mr. Amit Kapur, learned Counsel for the Applicant-Appellant, would submit that the Appellant-Association had participated in the proceedings during the tariff determination process, and had submitted its comments dated 18.01.2023; the impugned order records their presence as also the objections submitted on their behalf; in the appeal filed by them, the Appellant has highlighted how its members are aggrieved by the additional tariff burden imposed by the impugned order, which would result in a higher tariff being paid by the Appellant of Rs.3.10 per unit; the Appellant satisfies the test of being a person aggrieved as laid down by the Gujarat High Court in **Lalbhai Trading Co. vs. Union of India** (2005 SCC Online Guj 500); the admissibility of an appeal filed by a Registered Association is no longer

res-integra in the light of the judgments of this Tribunal in **South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors.** (judgment in Appeal no. 148 of 2010 dated 05.04.2011), and **Indian Wind Energy Association vs. GERC & Ors.** (judgment in Appeal No. 24 of 2013 dated 25.04.2013); and the relief, if any, granted to the Appellant would be applicable to the Members of the Association in view of Order 1 Rule 8 CPC, and, in view of the judgments of the Supreme Court in **C.J. Baby & Ors. Vs. Fr. Jiju Varghese & Anr** (2020 5 SCC 420) and **K. S. Varghese & Ors. vs. Saint peter's and Saint Paul's Syrian Orthodox Church & Ors** (2017 15 SCC 333).

A. JUDGEMENTS RELIED ON BEHALF OF CSPDCL:

In **Tata Power Delhi Distribution Limited vs. Delhi Electricity Regulatory Commission** (Judgement in Appeal No. 246 of 2014 dated 13.09.2019), this Tribunal held that, once the Commission has trued up the facts and figures projected by the Appellant on year to year basis and has passed final orders, there is no scope for reopening of the trued up matters for reconsideration of any aspect by devising any new methodology or any new principle; they did not find any force in the submissions of learned counsel for the Respondent Commission, that, as the Appellant had not challenged the observations, of the Commission contained in the MYT order dated 13.07.2012, in Appeal No. 171 of 2012, it could not challenge the same in the present appeal; however, to meet the end of justice, the Appellant was needed to be given an opportunity to challenge any issue which deprived it of any benefit it was legally entitled for, or otherwise rendered it to an disadvantageous position as the case may be; and when final true up for previous years have been completed and final orders are passed by the

Commission, which have attained finality, they cannot be reopened for re-examination.

In the light of the submission of Mr. Amit Kapur, Learned Counsel, that the Applicant-Appellant does not seek to reopen the tariff determination exercise; and their challenge to, and the relief sought, in the present appeal is confined only to the tariff period governed by the impugned order, it is evident that reliance placed on behalf of CSPDCL, on **Tata Power Delhi Distribution Limited vs. Delhi Electricity Regulatory Commission** (Judgement in Appeal No. 246 of 2014 dated 13.09.2019), is misplaced.

B. JUDGEMENTS RELIED ON BEHALF OF THE APPLICANT-APPELLANT:

In **South India Sugar Mills Association (Karnataka) v. Karnataka Power Transmission Corporation Ltd. [Appeal No. 148 of 2010 dated 05.04.2011]**, this Tribunal observed that the first objection of the Respondents was that the appeal was not maintainable on the ground of it not having been preferred by any individual, and the association of sugar factories did not have locus standi to prefer the appeal against the order for determination of tariff for the co-generation units attached to those factories; this contention was not maintainable in view of the fact that the appellant undisputedly was a society registered under the Karnataka Societies Registration Act, and an incorporeal body having capacity to sue and be sued; from the annexures to the memorandum of appeal, it was seen that the association had 30 members having sugar mills in Karnataka, and the sugar factories with co-generation units in Karnataka were 34 in number; in terms of the resolution of Committee, the Secretary of the Association had been duly

authorized to present the appeal; the appeal had thus been preferred by a registered body in its representative capacity to urge therein common view points; it was not an unregistered body, nor were the members obscure and uncertain; and the objection was thus liable to be repelled.

In **Indian Wind Energy Association v. GERC [Apl 24 of 2013 dated 25.04.2014]**, this Tribunal, after noting the contention of the Respondents that the Appellant was an Association and not a person or company engaged in wind power generation, and thus was not an aggrieved person within the meaning of Section 111 of the Electricity Act, 2003 to file this Appeal, observed that, according to the Appellant, it was a registered organization and some of its members were generators of electricity from wind energy who were affected by the impugned order; Section 2 (49) defines “person” to include any company or body corporate or association or body of individuals, whether incorporated or not or artificial juridical person; the Appellant Association was a registered body which had members who were wind energy generators some of which were located in the State of Gujarat and were aggrieved by the impugned order; this issue had already been dealt with by this Tribunal in **South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors.** (judgment in Appeal No. 148 of 2010 dated 5.4.2011); the findings in the said judgment would apply to the present case also; the Appellant was a registered organization; the Appellant had also filed supporting documents regarding its registration, list of members, including those operating in Gujarat who were aggrieved by the impugned order; and, accordingly, the Appeal filed by the Appellant Association, as an aggrieved person, was maintainable.

In **K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church, (2017) 15 SCC 333**, the Supreme Court held that Order 1 Rule 8 CPC was an exception to the general rule that all persons interested in the suit are to be made parties thereto; the object for which the provision was enacted was to provide an exception to the ordinary procedure in a case where common rights of the community or members of such association or large section are involved; it will be practically difficult to institute the suit under the ordinary procedure by impleading every person in which every individual has to maintain account by a separate suit and to avoid numerous suits being filed for a decision on the common question; Order 1 Rule 8 was enacted so as to simplify the procedure; in case parties have bona fide litigated the question and there had been no collusion in such a suit, the decision would bind the others; the rule entitles one party to represent many and the action is maintainable without joinder of other parties; Order 1 Rule 8 presupposes that there are numerous persons having the same interest; one or more such persons, with permission of the court, may sue or be sued or may defend such suit on behalf of the persons so interested; in such a case notice has to be given as per Order 1 Rule 8(2) by way of public advertisement and then any person on whose behalf or whose benefit the suit is instituted or defended has a right to apply to the court to be made a party to such a suit; Order 1 Rule 8(6) provides that the decree in a suit under this rule shall be binding on all the persons on whose behalf or for whose benefit the suit is instituted or defended, as the case may be.

The Judgement of the Supreme Court, in **K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church, (2017) 15 SCC 333**, was followed in **C.J. Baby v. Fr. Jiju Varghese, (2020) 5 SCC 420**.

Relying on **Bar Council of Maharashtra v. M.V. Dabholkar: (1975) 2 SCC 702**; **Jasbhai Motibhai Desai v. Roshan Kumar: (1976) 1 SCC 671**; **In re Sidebotham, (1880) 14 Ch D. 458**; **Gopabandhu Biswal v. Krishna Chandra Mohanty: (1998) 4 SCC 447**; **Shobha Suresh jumani v. Appellate Tribunal, Forfeited Property: (2001) 5 SCC 755**; **Thammanna v. K. Veera Reddy, (1980) 4 SCC 62**; **Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd., (1997) 4 SCC 452**; and **Bansari v. Ram Phal: (2003) 9 SCC 606**, the Gujarat High Court, in **Lalbhai Trading Co. v. Union of India, 2005 SCC OnLine Guj 500**, observed that the phrase “person aggrieved” is wider than the phrase “party aggrieved”; generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other; and a person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him.

C. ANALYSIS:

Section 111(1) of the Electricity Act, 2003 enables “any person aggrieved”, by the order made by the Appropriate Commission under the Electricity Act, to prefer an appeal to this Tribunal. The words “*any person aggrieved*” are of wide import, and bring within its ambit any person who has either suffered a legal injury or is likely to suffer a legal injury as a result of the order against which they seek to prefer an appeal.

While the Appellant is no doubt a society registered under Societies Registration Act, its core members are telecom service providers who are classified, in terms of the impugned order, under the “*commercial tariff category*” as against their claim of falling under the “*industrial tariff category*” and, as a result, the tariff prescribed for telecom service

providers is higher by Rs. 3.10 per unit. As the liability, fastened by the impugned order on the telecom service providers, is higher by Rs. 3.10 per unit in case the impugned tariff order continues to remain in force, it is evident that the members of the Appellant association are aggrieved by the impugned order passed by the CSERC.

The impugned order, passed by the CSERC, records that the petitions filed by CSPDCL and others were registered from 01.12.2022 onwards; these companies were directed to publish an abridged version of these petitions in the Newspapers for inviting comments/objections/suggestions from the stake-holders; a period of 21 days was given for submission of written objections and suggestions by the public; the petitioner companies were directed to submit written replies to the Commission with copies endorsed to the objectors; the list of persons, who filed written submissions, was annexed as Annexure-I; Public hearing was held on 21st and 22nd February, 2023; and the list of persons who submitted their comments, during the hearing, was annexed as Annexure-II. Among the 21 persons, who submitted their written submissions and whose names are referred to in Annexure-I, is Lt. Gen. Dr. S.P. Kochar, Director General COAI (Cellular Operators Association of India), New Delhi. It is only after the Appellant filed its objections before the CSERC, by its letter dated 18.01.2023, that the impugned tariff order was passed by the CSERC on 28.03.2023 determining the true up of FY 2021-22 and re-determining the ARR and retail tariff for FY 2023-24.

The test to be applied, at the present stage of the proceedings, is not whether the Appellants are justified in their claim that their members should be classified under the industrial tariff category, as against their being classified in the impugned order under the commercial tariff

category, for that must await the main appeal being finally heard on its merits. The test to be applied, in deciding whether or not leave to file appeal should be granted, is whether, if their claim is presumed to have merit, they can be said to be a person aggrieved by the order against which they seek leave to file the present appeal.

To satisfy the test of a “person aggrieved”, one is required to establish that one has been denied or deprived of something to which one is legally entitled. A person can be aggrieved if a legal burden is imposed on him. As the expression “person aggrieved” has not been defined in the Electricity Act, it should be given its natural meaning, which would include a person whose interest is, in any manner, affected by the order, and these words are of the widest amplitude. **(Emmar MGF Construction Pvt. Ltd. v. Delhi Electricity Regulatory Commission : (Order of APTEL in APL No. 123 of 2008 dated 08.09.2009); Tata Power Delhi Distribution Ltd. v. Delhi ERC, 2023 SCC OnLine APTEL 14; Bar Council of Maharashtra v. Dabholkar (1975) 2 SCC 702, Municipal Corpn., Greater Bombay v. Lala Pancham, 1964 SCC OnLine SC 91 and J.M. Desai v. Roshan Kumar (1976) 1 SCC 671; Reliance Industries Ltd. v. PNGRB, 2014 SCC OnLine APTEL 5; and Rain CII Carbon (Vizag) Ltd. v. A.P. ERC, 2023 SCC OnLine APTEL 40).**

The expression “any person aggrieved” would mean a person who has suffered a legal grievance or legal injury or one who has been unjustly deprived and denied of something which he would have been entitled to obtain in the usual course. **(Grid Corpn. of Orissa Ltd. v. Gajendra Haldea, (2008) 13 SCC 414).** A ‘person aggrieved’ must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of

something, or wrongfully refused him something or wrongfully affected his title to something”. (**In Re Sidebotham Ex p. Sidebotham: (1880) 14 Ch D 458 CA; Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484**). The words “person aggrieved” are of wide import and should not be subjected to a restricted interpretation. They include not a busy body but certainly one who had a genuine grievance because an order had been made which prejudicially affected his interests. (**Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484**).

As the words “any person aggrieved” are of the widest amplitude, the only question which necessitates examination is whether the Appellants can be said to have any grievance against the impugned order. It is not in dispute that the three major telecom service providers in the country are the core members of the Appellant, a society registered under the Societies Registration Act. If appeals had been preferred by each of these telecom service providers separately, this contention would not arise for consideration.

The telecom service provider members of the Appellants are required to pay the tariff applicable to commercial consumers which is higher by Rs.3.10 per unit when compared to the lower tariff applicable to industrial consumers (which category they claim to fall within). The issue which necessitates consideration in the present case is whether the CERC is justified in treating the members of the Appellant-association as falling under the commercial tariff category for FY 2023-24 or whether they should, in fact, be classified as falling under the industrial tariff category. As a registered society is entitled to represent and espouse the cause of its members, and as the three major telecom

service providers are its members, the appellant has the locus standi, as a “person aggrieved”, to file the present appeal.

We are of the view that the members of the Appellant association satisfy this test, and the Appellant association, (which represents its members in the present appeal), is a “person aggrieved, and is therefore entitled to be granted leave to prefer the present appeal. Viewed from any angle, the submission that the Appellants are not “*persons aggrieved*” necessitates rejection.

II. HAS THE APPELLANT NOT BEEN AUTHORISED BY THE TELECOM SERVICE PROVIDERS TO FILE THE PRESENT APPEAL?

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the affidavit filed by the Appellant and the vakalatnama filed on their behalf do not show that they have received any authority from its Members ie Idea, Airtel and Vodaphone; each of these Telecom Service Providers are huge conglomerates of India having sufficient funds to pursue their own interest; and, in the absence of express authority, the Appellant cannot be deemed to represent any of these three Telecom Service Providers as their agent.

On the authority of the signatory, Mr. Amit Kapur, Learned Counsel for the Applicant-Appellant, would submit that that the Appeal has been verified and filed by Mr. Vikram Tiwathia, Deputy Director General of the Appellant Association who is competent to do so in terms of Rules 13 and 1 of the Rules and Regulations of the Appellant; the Appellant has also filed the certificate of its registration as an Association along with a list of its Members and a copy of its byelaws; the admissibility of an appeal filed by a Registered Association is no longer res-integra in the

light of the judgments of this Tribunal in **South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors.** (judgment in Appeal no. 148 of 2010 dated 05.04.2011), and **Indian Wind Energy Association vs. GERC & Ors.** (judgment in Appeal No. 24 of 2013 dated 25.04.2013); and the relief, if any, granted to the Appellant would be applicable to the members of the Association in view of the Order 1 Rule 8 CPC in view of the judgments of the Supreme Court in **C.J. Baby & Ors. Vs. Fr. Jiju Varghese & Anr** (2020 5 SCC 420), and **K. S. Varghese & Ors. vs. Saint peter's and Saint Paul's Syrian Orthodox Church & Ors** (2017 15 SCC 333).

On the authority of the signatory, a compliance affidavit dated 24.06.2024 is filed wherein it is stated by Mr. Vikram Tiwathia that he is the authorised signatory of the Cellular Operators Association; the Appellant follows the rules and regulations approved by its Executive Council, which function as its “bye-laws”; these rules and regulations were approved by the Executive Council by circulation on 06.06.2022; the Appellant is an Association registered under the Societies Registration Act of 1860 with Registration No. S-29784 of 1996 dated 10.07.1996, and this certificate is issued by the Registrar of Societies, Government of Delhi.

Rule 1.0 Clause (a) of the Rules and Regulations of the Appellant's Association defines “Association” to mean the Appellant, Clause (b) defines “Member” to mean such body/ corporate/ company entity who is eligible to be a member of the Association and whose application for membership has been accepted in accordance with the Rules and Regulations; Rule 2.0 deals with Membership and classifies Core Members and Associate Members; and Clause 2.2 deals with the admission procedure. Along with the affidavit, the Appellant has also

enclosed a list of its Core Members and Associate Members. While the three Core Members are Bharti Airtel Limited, Vodafone Idea Limited and Reliance Jio Infocomm Limited, the list of associate members contain 18 names.

In the light of the judgements of this Tribunal, in **South India Sugar Mills Association (Karnataka) vs. Karnataka Power Transmission Corporation Ltd. & Ors.** (judgment in Appeal No. 148 of 2010 dated 5.4.2011) and **Indian Wind Energy Association v. GERC [Apl 24 of 2013 dated 25.04.2014]**, the appeal, preferred by a society registered under the Societies Registration Act (an incorporeal body having capacity to sue and be sued) in its representative capacity, is maintainable.

The above referred Rules and Regulations of the Appellant show that the three telecom service providers, ie Reliance Jio, Airtel and Vodaphone, are its core members. The Appeal was deposed to, and the vakalatnama was filed on its behalf, by Mr. Vikram Tiwathia, who is the authorised signatory of the Appellant-Association. As the Appellant, a society registered under the Societies Registration Act, is entitled to espouse the cause of its members, it matters little that its three Telecom Service Provider members, ie Reliance Jio, Airtel and Vodaphone, are huge conglomerates having sufficient funds to pursue their own interest. The submission, urged on behalf of CSPDCL under this head, necessitates rejection.

III. WOULD THIS TRIBUNAL SUFFER LOSS OF REVENUE BY ENTERTAINING THIS APPEAL?

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that, by entertaining the present Appeal, this Tribunal would suffer loss

of revenue; as against the court fee paid by the Appellant of Rs.1 lakh, this Tribunal would have received Rs.3 lakhs as court fees, if Reliance Jio Infocomm Limited, Airtel and Vodaphone had filed their respective Appeals separately; and entertaining this Appeal would deprive this Tribunal of the revenue to which it is entitled.

In examining whether, by entertaining this Appeal, this Tribunal has been deprived of the court fee, which it would have otherwise been entitled to, it is useful to note that, in the exercise of its powers under Section 176 of the Electricity Act, the Central Government made the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules 2007 (for short “the **2007 Rules**”), which was published in the Gazette, and came into force, on 22.01.2007. Chapter VIII of the 2007 Rules relates to fee on petition / appeal, process fee and award of costs. Rules 55, thereunder, prescribes the fee payable on appeal or petition. Rules 55(1) stipulates that the fee for filing an appeal or petition, either under sub-section (2) of Section 111 or Section 121 etc, shall be as prescribed in the Schedule of fee appended to the Rules. The Schedule to the Rules relates to the Fees and thereunder the fee payable on an Appeal/ petition, if proceedings are instituted by more than one Appellants /Petitioners, or Association, is Rs.1,00,000/-. In the present case, the Appeal has been instituted by an Association registered under the Societies Registration Act. In terms of item (iii) of the Schedule, above referred, they are liable to pay fees of Rs.1,00,000/- which they have admittedly paid. As the fees stipulated under the statutory rules has been paid by the Applicant-Appellant, the possibility of this Tribunal receiving substantially higher fees if each of the members of the association had paid separate fees on filing separate appeals, is no ground to reject the present appeal.

IV. SIMILAR APPEALS HAVING BEEN ENTERTAINED: ITS EFFECT:

Mr. Amit Kapur, learned Counsel for the Appellant, would submit that this Tribunal has already entertained five appeals, filed by the very same Appellant, against retail supply tariff orders involving the same issue of wrongful classification and consequential unfair tariff burden, which are pending adjudication; and these Appeals are (1) Rajasthan - Appeal No. 59 of 2024: placed in the List of Short Matters of Court-1 vide order dated 23.01.2024, (2) Andhra Pradesh – Appeal No. 882 of 2023: placed in the List of Short Matters of Court 1 vide order dated 22.02.2024, (3) Uttarakhand – Appeal No. 119 of 2024: placed in the List of Short Matters of Court 1 vide order dated 26.02.2024, (4) Madhya Pradesh -: Appeal No. 161 of 2024: placed in the List of Short Matters of Court 1 vide order dated 12.03.2024, and (5) Assam – Appeal No. 188 of 2024: placed in the List of Short Matters of Court 1 vide order dated 02.04.2024.

As rightly contended, on behalf of the Applicant-Appellant, several appeals filed by the Appellant, with respect to tariff orders passed by other State Regulatory Commissions on the very same issue, have already entertained after leave to file appeal was granted. These appeals are pending adjudication on the file of this Tribunal. While the Appellant may not per se be a consumer, it does not appear to be in dispute that the telecom service providers, which are its members, are consumers of electricity supplied by the distribution licensees located within the State of Chhattisgarh, and are undoubtedly aggrieved by their being classified under the commercial tariff category in terms of the impugned order.

Since other appeals filed by the Appellant, with respect to the very same issue albeit against orders passed by other Regulatory Commissions, were entertained on leave being granted, and are pending on the file of this Tribunal, there is no justification in non-suiting them in the present case, and they are entitled to be granted leave to file appeal.

V. CONSISTENT VIEW TAKEN IN TARIFF ORDERS PASSED FOR THE EARLIER YEARS: DOES IT BAR A CHALLENGE TO THE IMPUGNED ORDER?

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the CERC has only followed the consistent past practice for the previous 12 to 15 years whereby Cellular Operators have been treated as falling within the commercial tariff category; and, having acquiesced to such classification, it is impermissible for them to now turn around and question the validity of such a classification.

On the other hand Mr. Amit Kapur, Learned Counsel, would submit that the Applicant-Appellant has, in the present appeal, only challenged the categorisation of the Appellant, in the impugned order, as falling under LV5 category; they are not seeking to have the tariff orders passed by the CERC, for the earlier years, set aside on this ground; and, merely because the Appellant had not challenged the tariff orders for the earlier years, does not disable them from challenging the impugned order on this score, more so, as each tariff order is independent of the tariff orders passed by the CERC for the earlier years. Reliance is placed by him on **Delhi Transco Ltd. vs. DERC, 2009 SCC OnLine APTEL 6** to submit that each tariff order gives rise to a fresh cause of action and can be challenged separately; and on **U.P.**

Power Corpn. Ltd. vs. NTPC Ltd., (2009) 6 SCC 235, to submit that, in tariff matters, the principles of res judicata do not apply.

In **Delhi Transco Ltd. vs. DERC, 2009 SCC OnLine APTEL 6**, it was not disputed, by the counsel appearing before this Tribunal, that each assessment year of a tariff order gave rise to a fresh cause of action and could be challenged separately. This Tribunal, relying on the judgements of the Supreme Court, in **Bharat Sanchar Nigam Ltd. v. Union of India, (2006) 3 SCC 1**; and **Radhasoami Satsang Swami Bagh, Agra v. Commissioner of Income Tax, (1992) 1 SCC 659**, held that, although the appellant did not challenge the earlier tariff orders, it did oppose the proposition that was adopted by the Commission namely that the appellant should be denied the right to recover its revenue requirement to the extent of the past receivables; the appellant had been asking the Commission to transfer 80% of the past receivables to it; the accounts position of the appellant reflected the factual position namely that the past receivables had not been received by it and these accounts had not been held to be incorrect or flawed by the Commission; it could not be said that the appellant had accepted the Commission's method in this regard for such an unduly long time that, following the principles in the said judgment, the appellant can be non-suited on the ground that it was challenging a settled position of fact or law; the view taken by the Commission that past receivables, not received by the appellant, be deemed to have been received by the appellant bordered on absurdity; since each tariff order is distinct and separate, the appellant would be fully justified in approaching this Tribunal to challenge the impugned order vis a vis the year 2006-07.

In **Bharat Sanchar Nigam Ltd. v. Union of India, (2006) 3 SCC 1**, the Supreme Court held that res judicata does not apply in matters

pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. Nonetheless the Supreme Court proceeded to hold that Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position.

In **Radhasoami Satsang Swami Bagh, Agra v. Commissioner of Income Tax, (1992) 1 SCC 659** the Supreme Court, while reiterating that res judicata does not apply to income tax proceedings, held that “each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be appropriate to allow the position to be changed in a subsequent year.

In **U.P. Power Corpn. Ltd. v. NTPC Ltd., (2009) 6 SCC 235**, the Supreme Court held that the jurisdiction of the Commission, in so far as alterations or amendment of tariff is concerned, is not barred in terms of Order 2 Rule 2 of the Code of Civil Procedure or the principles analogous thereto; having regard to the nature of jurisdiction of the Commission, in a case of this nature, even principles of res judicata has no application; making of a tariff is a continuous process; it can be amended or altered by the Commission, if any occasion arises therefor; and the said power can be exercised not only on an application filed by the generating companies but by the Commission also on its own motion.

Both, in **Bharat Sanchar Nigam Ltd. v. Union of India, (2006) 3 SCC1** and **Radhasoami Satsang Swami Bagh, Agra v. Commissioner of Income Tax, (1992) 1 SCC 659**, on which reliance was placed by this Tribunal in **Delhi Transco Ltd. vs. DERC, 2009 SCC OnLine APTEL 6**, the Supreme Court, while holding that res judicata did not apply in matters pertaining to tax for different assessment years, also observed that Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position, and where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other, and parties have allowed that position to be sustained by not challenging the order, it would not be appropriate to allow the position to be changed in a subsequent year.

At this stage, we are concerned only with the question whether or not the appeal preferred by the Applicant-Appellant should be entertained, and not whether the Appellant is entitled to be granted the relief of their being classified under the commercial tariff category and for the impugned order to be set aside. The afore-said questions, and questions whether failure on the part of the Applicant-Appellant to challenge the tariff orders of earlier years would amount to acquiescence disentitling them from being granted relief in the present appeal; and whether the impugned tariff order for FY 2023-24 gives rise to a fresh cause of action, do not necessitate examination, at this stage of the proceedings, for such questions can only be adjudicated when main appeal is finally heard.

Suffice it to record the submission of Mr. Amit Kapur, Learned Counsel for the Applicant-Appellant, that, even if the impugned order

were to be set aside, the relief which this Tribunal would be entitled to grant the Appellant would necessarily be confined to FY 2023-24, and not for the previous years as the tariff orders passed for such earlier years have attained finality.

As we are only concerned, at the present stage, with the question whether or not the appellant is a person aggrieved, entitled to file an appeal under Section 111 of the Electricity Act, and as we have already held that they are, we see no reason to dwell on the contentions urged, on behalf of CSPDCL, under this head as they necessitate detailed examination when the appeal is finally heard and adjudicated.

VI. TEST OF “NECESSARY”/ “PROPER” PARTIES: DOES IT APPLY IN THE PRESENT CASE:

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the Appellant is neither a proper nor a necessary party and is, therefore, not entitled to prefer the appeal. Reliance is placed in this regard on **Kasturi vs. Iyyamperuma, AIR 2005 SC 2813**.

In **Kasturi v. Iyyamperumal, (2005) 6 SCC 733**, the appellant had filed the suit against Respondents 2 and 3 for specific performance of a contract entered into between the second respondent acting as a power of attorney of the third respondent on the one hand and the appellant on the other for sale of the contracted property. In this suit for specific performance of the contract for sale, Respondents 1 and 4 to 11, who were admittedly not parties to the contract, and were setting up a claim of independent title and possession over the contracted property, filed an application to get themselves added in the suit as defendants. The trial court allowed the application on the ground that, as Respondents 1 and 4 to 11 were claiming title and possession of the contracted

property, they must be held to have a direct interest in the subject-matter of the suit, and were, therefore, entitled to be added as party-defendants in the suit as their presence would be necessary to decide the controversies raised in the present suit. The High Court in revision confirmed the said order. Aggrieved thereby the appellant approached the Supreme Court.

The only question which arose for the consideration of the Supreme Court was whether, in a suit for specific performance of a contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, was entitled to be added as a party-defendant in the said suit.

It is in this context that the Supreme Court held that a bare reading of the second part of Order 1 Rule 10 sub-rule (2) CPC would show that two tests are to be satisfied for determining the question who is a necessary party; the tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party; on the question as to who is a proper party in a suit, the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit; the question is to be decided keeping in mind the scope of the suit; necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle

all the questions involved in the suit although no relief in the suit was claimed against such person.

A necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (**Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar AIR 1963 SC 786; U.P. Awas Evam Vikas Parishad v. Gyan Devi; Indiabulls Housing Finance Ltd. v. Surya Chakra Power Corporation Ltd., 2015 SCC OnLine Hyd 181; Trivikram Singh Kunwar v. State of Uttarakhand, 2019 SCC OnLine Utt 32**).

A tribunal performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In an appeal preferred by the defeated party, to set aside the order issued by the tribunal in favour of the successful party, the appellate court cannot interfere with the said order without the successful party being before it. Without the presence of the successful party the appellate Court cannot issue a substantial order affecting his right. Such a party is, therefore, a necessary party and an appeal filed without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party. (**Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar AIR 1963 SC 786; Indiabulls Housing Finance Ltd. v. Surya Chakra Power Corporation Ltd., 2015 SCC OnLine Hyd 181; Trivikram Singh Kunwar v. State of Uttarakhand, 2019 SCC OnLine Utt 32**).

In the present case, it is not as if CSPDCL, whose tariff was determined by the CSERC and is a necessary party to the appeal, has not been arrayed as a respondent in the appeal. The test to determine whether the applicant, which was not a party to the proceedings before the CSERC, is entitled to prefer an appeal, against the order passed by the CSERC, is not whether they are a necessary/proper party but whether they are a “person aggrieved”. As they have already been held to be such, and to be entitled to be granted leave to file the present appeal, the contentions urged, on behalf of CSPDCL, under this head is wholly irrelevant to the issue involved in the present IA.

VII. IS THE PRESENT APPEAL IN THE NATURE OF A PUBLIC INTEREST LITIGATION?

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the present Appeal is in the nature of a Public Interest Litigation as the Appellant Association is espousing the cause of others; there is no provision in the Electricity Act for such petitions to be entertained; and the Public Interest Litigation jurisdiction can only be exercised by High Courts under Article 226 and the Supreme Court under Article 32 of the Constitution.

The contention that this appeal is in the nature of a public interest litigation is only to be noted be rejected. A public interest litigation is instituted, in larger public interest, by a person espousing the cause of others, mainly in cases where the persons whose cause is espoused cannot afford to avail their judicial remedies. Such proceedings, which relate to causes in public interest, can only be instituted before the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution of India. As this Tribunal is a creation under the Electricity

Act, exercise of its jurisdiction is confined to issues arising, and the orders passed by the Appropriate Commissions, under the Electricity Act.

The present appeal is not a Public Interest Litigation since the Appellant is only espousing the cause of its members, and has confined its challenge to the impugned tariff order whereby its members are said to be adversely affected. As the Appellant is an Association registered under the Societies Registration Act, it is entitled to espouse the cause of its members. It is difficult for us, therefore, to accept the submission, urged on behalf of the Respondents, that the present Appeal as filed is in the nature of a Public Interest Litigation.

VIII. HAS THE APPELLANT APPROACHED THIS TRIBUNAL WITH UNCLEAN HANDS?

Mr. Ravi Sharma, learned Counsel for CSPDCL, would submit that the Appellant has approached this Tribunal with unclean hands with distorted facts to gain an undue advantage; and they have resorted to clever drafting to create a cause of action.

In the absence of any particulars being furnished as to how the appellant can be said to have approached this Tribunal with unclean hands, or the basis on which they are said to have distorted facts to gain undue advantage, or as to how they have created a cause of action by clever drafting, the contentions urged under this head necessitates rejection.

CONCLUSION:

For the afore-said reasons, the objections raised on behalf of CSPDCL, to the maintainability of the IA for grant of leave to file Appeal,

are rejected. Leave, as sought for, is granted and the IA is, accordingly, disposed of.

List the matter on _____

Pronounced in the open court on this the **06th day of August, 2024.**

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 127 OF 2024

Dated: 6th August, 2024

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member(Electricity)

In the matter of:

Cellular Operators Association of India Appellant(s)

Versus

Chhattisgarh State Electricity Regulatory Commission & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Amit Kapur
Akshat Jain
Aditya H. Dubey
Abhimanyu Maheshwari
Avdesh Mandloi
Shikhar Verma for App. 1

Counsel on record for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani for Res. 1
Ravi Sharma for Res. 2

ORDER

Reply shall be filed within six weeks and rejoinder shall be filed within four weeks thereafter.

After pleadings are complete, Registry to verify and then include the appeal in the List of Short Matters, to be taken up from there in its turn.

Seema Gupta
Technical Member

Justice Ramesh Ranganathan
Chairperson

mk/dk